

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

19-CR-401 WJ

THOMAS ABEYTA,

Defendant.

MOTION TO DETERMINE COUNSEL

COMES NOW James C. Loonam, Assistant Federal Public Defender, who is court appointed to represent Mr. Thomas Abeyta in this matter, and moves the court to hold a hearing to determine his continued status as Mr. Abeyta's counsel, as grounds states:

1. On January 29, 2019, undersigned counsel was appointed to represent Mr. Abeyta in this matter. Mr. Abeyta is charged by way of criminal complaint on January 26, 2019 with violating 18 U.S.C. § 2241 and 2246. Mr. Abeyta was indicted on these charges on February 13, 2019.

2. On January 31, 2019, United States Magistrate Judge Jerry Ritter ordered Mr. Abeyta be evaluated to determine if he is competent to be tried in this matter.[ECF Doc. 8]. Judge Ritter ordered this in response to undersigned counsel raising the issue of Mr. Abeyta's competency at his initial hearing. One aspect of counsel's concerns at that

time was the fact that Mr. Abeyta refused to interact with appointed counsel in any manner. In response to Judge Ritter's order, the court clerk assigned the evaluation to Dr. Troy Rodgers. [ECF Doc. 9]. Dr. Rodgers informed the Court on February 18, 2019 that Mr. Abeyta refused to participate in the evaluation. [ECF Doc. 12]. On April 3, 2019, this Court ordered Mr. Abeyta to be evaluated by medical staff at a Bureau of Prisons facility. [ECF Doc. 15]. Mr. Abeyta was deemed to be competent to stand trial by BOP medical staff. [ECF Doc. 18]. This Court adopted that finding without objection by the parties on December 6, 2019. On December 30, 2019, Mr. Abeyta was arraigned on the indictment in this matter.

3. Since his arraignment, Mr. Abeyta has refused to meet with his appointed counsel. On January 22 and 29 and February 14 undersigned counsel traveled to Milan New Mexico to meet with Mr. Abeyta regarding this case. On those occasions, Mr. Abeyta has refused to attend the meetings. Attached to this pleading is email communication from Corrections Officer Caldwell who is the person in charge of coordinating attorney/client visits for the Cibola County Detention Center where the United States Marshalls are holding Mr. Abeyta. Undersigned counsel did meet with Mr. Abeyta on occasions before this. During those meetings Mr. Abeyta refused to engage in meaningful discussions about this matter or the factual allegations against him.

4. It is not possible for defense counsel to provide Mr. Abeyta adequate representation if he refuses to engage with defense counsel.

5. Undersigned counsel now requests this Court to hold a hearing to determine if Mr. Abeyta will engage with counsel in a manner that afford him adequate representation.

WHEREFORE, Counsel for the Defendant in this matter requests this Court to hold a hearing to determine the status of the representation of Mr. Abeyta in this matter.

Respectfully submitted,

FEDERAL PUBLIC DEFENDER
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/s/ filed electronically on 2/19/20
JAMES C. LOONAM, AFD
Attorney for Defendant